APPENDIX A.

Sections 1 and 2, Article 7, Constitution of the State of Oklahoma:

Section 1: "The judicial power of this state shall be vested in the Senate, sitting as a court of impeachment, a Supreme Court, district courts, county courts, courts of justices of the peace, municipal courts, and such other courts, commissions or boards, inferior to the Supreme Court, as may be established by law."

Section 2: "The appellate jurisdiction of the Supreme Court shall be coextensive with the state, and shall extend to all civil cases at law and in equity, and to all criminal cases until a Criminal Court of Appeals with exclusive appellate jurisdiction in criminal cases shall be established by law. The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all commissions and boards created by law. The Supreme Court shall have power to issue writs of habeas corpus, mandamus, *quo warranto*, certiorari, prohibition, and such other remedial writs, as may be provided by law, and to hear and determine the same; and the Supreme Court may exercise such other and further jurisdiction as may be conferred upon it by law.

"Each of the justices shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and make such writs returnable before himself, or before the Supreme Court, or before any district court, or judge thereof, in the state."

Section 528, Oklahoma Statutes, 1931:

"528. Supreme Court—Appellate Jurisdiction—Review on Merits—Review of Orders.

The Supreme Court may reverse, vacate or modify judgments of the county, superior or district court, for errors appearing on the record, and in the reversal of such judgment or order, may reverse, vacate or modify any intermediate order involving the merits of the action, or any portion thereof. The Supreme Court may also reverse, vacate or modify any of the following orders of the county, superior or district court, or a judge thereof:

First. A final order.

Second. An order that grants or refuses a continuance; discharges, vacates or modifies a provisional remedy; or grants, refuses, vacates, or modifies an injunction; that grants or refuses a new trial; or confirms or refuses to confirm, the report of a referee; or sustains or overrules a demurrer.

Third. An order that involves the merits of an action, or some part thereof."

APPENDIX B.

Testimony of Various Witnesses:

EVAN E. MORGAN:

Direct Examination by Mr. Suits.

"Q. When did you commence railroading?

A. Well, let's see. It has been a long time ago. 1893.

Q. And you have been railroading continuously since that time?

A. Well, not continuously, but every time I had employment.

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Q. Now, how long had you worked at Clinton before you retired?

A. Since 1927.

Q. Now, what kind of work were you doing at Clinton?

A. Well, it is what they call engine foreman (R. 60).

Q. As engine foreman do you have a crew under your supervision?

A. Yes, sir (R. 61).

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A. I kept walking on till I came to where the cut was, the four cars, and I reached in on that lever with my hand, which would ordinarily be the proper thing to do, but I come to find out I couldn't trip that pin lifter with my hand. I wasn't heavy enough.

Q. Did you apply enough force to trip it?

A. Well, in ordinary cases, there was enough force applied, yes, sir.

Q. Well, go ahead and tell us why it wouldn't work for you.

A. I *think* the engineer saw I was just getting ready to trip the pin and he applied the brake a fraction of a second too soon and the slack had run out, and it was impossible to pull the pin, so then I got up on the car, this fourth car, I got up on there and put my foot on the lever and give him the sign to give me some slack, a little bit, and he give me the slack.

Q. Now, then, when you put your foot on it, it did work?

A. Yes, sir (R. 63).

Q. And when you reached the point opposite the end of these four cars, did you give him any further signal?

A. Gave him the sign to stop just as I took hold of the lever to trip it.

Q. Did you give him the sign to stop before you took hold of—lever?

A. I saw just as I went to take hold of the lever, I gave him the stop sign and took hold of the lever?

Q. Then if you took hold of the lever just as you gave him the signal to stop, there wasn't any reason why the coupler should not have worked?

A. No, not that I know of, unless like I said, he had previous to that time, had possibly applied the brake, just enough to take the slack out.

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Q. Well, had he had any signal from you to let the slack run out before you gave him that signal?

A. No, sir (R. 64).

Q. Now, Mr. Morgan, you say now that you gave the signal and you reached in at the same time to uncouple the cars?

A. Yes, sir.

Q. And this coupler wouldn't work?

A. No.

Q. You put pressure enough on it to work under ordinary conditions?

A. Yes, sir.

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Q. When you pressed down on the lever did it release the pin?

A. No, if it had the car would have uncoupled (R. 65).

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Q. Did you try more than once with your hand to uncouple it?

A. Yes. Just, you know, how a man will do, or try to do anything like that. Maybe I tried it a couple of times, or maybe three.

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Q. Are there any other makes of couplers, where you have found it necessary to use your foot in uncoupling cars?

A. That's the only one I know of.

Q. All of the other couplers you can use your hand?

A. Yes, sir. You can use your hand on this coupler. You can use your hand if you are heavy enough.

Q. Well, you have been railroading a long time, haven't you?

A. Yes, sir (R. 66).

Q. And you have been heavy enough over all these years to perform your work well, haven't you?

A. Yes, sir.

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Q. Had you ever found it necessary to use your foot before, in cars with this particular coupler?

A. Yes, many times (R. 67).

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Q. Now then, Mr. Morgan, the second time when you finally uncoupled it with your foot, if you had given him the signal to give you a little slack, could you have uncoupled with your hands?

A. No, I don't think I could, the way the ground was there and all (R. 76).

Direct Examination by Mr. Farmer.

Q. And you further said that after making arrangements with Mr. Essary for him to take care of the four cars that you expected to *shunt* down the main line, that you walked in a southerly direction about three car lengths and signalled the back up signal?

A. Yes, sir (R. 166).

RAYMOND C. HARRELL:

Direct Examination by Mr. Suits.

Q. What in your judgment would be the amount of slack in a string of 14 cars, if the slack was permitted to run out of all these cars?

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A. Well, that would give you, the extreme slack in the 14 cars would be anywhere from seven foot to twelve foot. I would say not less than seven foot (R. 83).

Q. What effect would 7 to 13 feet of slack running out of 14 cars have upon a man on top of the front car, not expecting any such a jolt or jar as that?

Mr. Grigsby: We object to that as incompetent, irrelevant and immaterial.

By the Court: Sustained.

Q. Well, would the slack running out of 14 cars be sufficient to throw a man from the top of the front car,

if he was not expecting the slack to run out?

* * *

A. It would.

Q. State, in your judgment, if the force of that would be sufficient to throw a man off of the top of the car?

A. It could be (R. 88).

HOWARD DODD:

Direct Examination by Mr. Suits.

Q. Now, Mr. Dodd, if a man was on top of the end of those cars for the purpose of braking them down when they had been uncoupled, if the uncoupling of the four cars failed for any reason and the slack on the 14 cars run out, state whether or not, in the range of your experience and based upon your judgment, there would be sufficient jerk in the running out of the slack to throw a man off the top of those cars?

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A. Yes, if he wasn't expecting the slack to, it could do it (R. 108).

W. T. SNOWDEN:

Direct Examination by Mr. Farmer.

Q. Mr. Snowden, does an engineer ever release his brakes and permit his train to roll back without receiving a signal?

A. No, sir.

Q. Why?

A. Because it is very dangerous to make a movement without a signal.

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Q. It would have been poor railroading to back up without a signal? (R. 175.)

A. The man that was running the engine wouldn't have backed up without a signal.

Q. Would he release the brakes and permit his cars to roll down without a signal?

A. No, sir (R. 176).

Q. Well, if the slack all run out, when the engineer released his brakes and started to roll down there, you couldn't uncouple the cars?

A. The engine will start rolling first. That was shoving the cars down.

Q. That was shoving the cars down?

A. Yes.

Q. In uncoupling, you uncouple the cars?

A. Yes, sir.

Q. This slack don't run out?

A. Not when you start to roll back.

Q. The slack runs out when the engine stops?

A. When the brakes are applied.

Q. Now, when that train came to a stop there, it must have received a signal to stop?

A. Yes.

Q. When the engineer applied his brakes and commenced to stop the engine, this slack would commence to run out in these other cars, wouldn't it?

A. Yes.

Q. And the slack must have run out because he stopped and then started over, didn't he?

A. Yes, sir.

Q. That's all (R. 177).

FRANK FAST:

Cross Examination by Mr. Suits.

Q. Did you permit your train that day, or any part of it, to roll back without any signal from Mr. Morgan?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. Do engineers ever permit, in yards like you were working in, the train to move without first receiving a signal?

A. Never.

Q. Why?

A. It is against the rules.

Q. Why is it against the rules, do you know?

A. Well, it is a safety rule.

Q. Well, it is dangerous, isn't it?

A. Yes (R. 179).

Q. And when you started back there, the engine would shove the other cars, wouldn't it, as you started back?

A. Yes (R. 180).